

EXHIBIT N

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

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5 BODO PARADY, as Special Administrator of the
Estate of SABINA PARADI AND BODO PARADY and

6 MARY MOORE, Individually,

JOB

7 Plaintiffs,

07 CIV 3640 (JCF)

8 -against-

9 MICHAEL R. PHILLIPS,

10 Defendant.

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12

13

14 DEPOSITION of a Nonparty Witness,

15 SHARLENE AQUILER, taken pursuant to Subpoena, held
16 at the offices of Barrister Reporting Service,
17 Inc., 120 Broadway, New York, New York, on
18 December 20, 2008, at 11:20 a.m., before a Notary
19 Public of the State of New York.

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23 BARRISTER REPORTING SERVICE, INC.

120 Broadway

24 New York, N.Y. 10271

212-732-8066

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<p>1 2 APPEARANCES: 3 4 DE CARO & KAPLEN, ESQS. 5 Attorneys for Plaintiffs 6 427 Bedford Road 7 Pleasantville, New York 10570 8 BY: MICHAEL V. KAPLEN, ESQ. 9 10 JAMES D. BUTLER, PA 11 Attorneys for Defendant 12 591 Summit Avenue 13 Jersey City, New Jersey 07306-2703 14 BY: JAMES D. BUTLER, ESQ. 15 16 ALSO PRESENT: 17 SHALOM STAVSKY, Student Reporter 18 19 xxxxx 20 21 22 23 24 25</p>	<p>2 1 Aquiler 2 SHARLENE AQUILER, 3 having been first duly sworn before a Notary 4 Public of the State of New York, was examined 5 and testified as follows: 6 EXAMINATION BY 7 MR. BUTLER: 8 Q What is your name? 9 A Sharlene Aquiler. 10 Q What is your address? 11 A 733 St. Nicholas Avenue, New York, New 12 York 10031. 13 Q My name is James Butler. I represent 14 the defendant in this lawsuit instituted by 15 the Parady family arising out of an incident 16 on February 25, 2007 at the corner of West 17 37th Street and Ninth Avenue. 18 You have some familiarity with that, 19 do you not? 20 A Yes. 21 Q You are appearing by reason of a 22 subpoena received by my office? 23 A Yes. 24 Q Prior to being served with that 25 subpoena, had you spoken with anybody in my</p>
<p>1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND AGREED by and 5 between the attorneys for the respective parties 6 herein, that filing, sealing and certification, 7 and the same are, hereby waived. 8 9 IT IS FURTHER STIPULATED AND AGREED that 10 all objections except as to the form of the 11 question, shall be reserved to the time of the 12 trial. 13 14 IT IS FURTHER STIPULATED AND AGREED that 15 the within deposition may be signed and sworn to 16 by an officer authorized to administer an oath, 17 with the same force and effect as if signed and 18 sworn to before the Court. 19 20 xxxxx 21 22 23 24 25</p>	<p>3 1 Aquiler 2 office? 3 A No. 4 Q What is your phone number? 5 A 917-583-2424. 6 Q Is that the same number that you gave 7 the police? 8 A Yes. 9 Q That has an answering service? 10 A Yes. 11 Q Did you, on that answering service, 12 get several calls from my office from an 13 investigator from my office asking to speak 14 with you? 15 A No. 16 Q You never heard a message on your 17 phone from my office asking you to call? 18 A No. 19 Q You never did call my office, did you? 20 A No. 21 Q When did you first speak with anyone 22 from Mr. Kaplen's office? 23 A About a month ago. 24 Q What happened at that time? 25 A He mentioned that he was representing</p>

1 Aquiler 2 the Parady family. 3 Q By phone? 4 A Yes, by phone and we should speak 5 about the incident and a few weeks later, I 6 found out about this deposition. 7 Q In between the time of that phone call 8 and a few weeks later when you found out 9 about this deposition, did you speak with Mr. 10 Kaplan or anybody from his office? 11 A No. 12 Q You didn't have any substantive talk? 13 A No. 14 Q On that first phone call, did you have 15 a talk about what happened or what you saw or 16 what you did not see? 17 A Briefly. 18 Q What did Mr. Kaplan ask you and what 19 did you say? 20 A He asked me to recount every event and 21 I recounted what I remembered. 22 Q Did he ask you any specific questions 23 about the weather? 24 A I believe so. 25 Q What did you tell him?	6 1 Aquiler 2 tire, which Michael Phillips got out of his 3 car and realized what happened. 4 Q She was lying on her back where you 5 said, near something? 6 A The tire, the front left tire. 7 Q Did you tell him where her feet were 8 with relation to the tire, and/or her head? 9 A Her torso was closer to the tire and 10 her feet towards I guess the front door, the 11 bottom of the door. 12 Q Where was her head facing? 13 A It was facing up when I saw her. 14 Q In terms of direction? 15 A She was on her back, it was straight 16 up. 17 Q What I meant in terms of direction -- 18 A Of the intersection? 19 Q The area, yes? 20 A Diagonal. If you're looking at the 21 intersection, she was at a diagonal. 22 Q When you say diagonal, can you tell us 23 in which direction that was? 24 A Her feet were facing the northeast 25 corner and her head was facing the southwest	8	9
1 Aquiler 2 A It was a wet night, precipitation. It 3 was slushy and sleet. 4 Q What did you tell him about the 5 precipitation that was falling? 6 A It was falling. It was in my face. 7 Q That was sleet? 8 A Yes. 9 Q Did he ask you anything about 10 location? 11 A Not necessarily. 12 Q Where you were, about where the 13 accident was? 14 A In terms of crosswalk and a curb, yes. 15 Q He asked about a specific crosswalk 16 and a curb? 17 A Yes. 18 Q What did you tell him? 19 A I recounted we were walking ahead of 20 Sabina and her friend. At a green light, 21 right before reaching the curb, we noticed a 22 truck trying to make it for that turn. We 23 heard the screech, the thud and we turned 24 around and noticed Sabina lying on her back 25 on the ground next to the front left wheel,	7 1 Aquiler 2 corner? 3 Q You were with your friend, is that 4 right? 5 A My friend Maria. 6 Q Is that Maria Eberline? 7 A Yes. 8 Q And you had been friends for some 9 time? 10 A Yes. 11 Q She was staying with you that weekend? 12 A Yes. 13 Q And you were a teacher? 14 A Yes. 15 Q Where did you teach? 16 A PS-368, West Harlem, third grade. 17 Q Where was that? 18 A On West 133rd between Broadway and 19 Amsterdam. 20 Q You live on St. Nicholas, up in that 21 area? 22 A Yes, 147th and St. Nicholas. 23 Q How long have you lived in New York? 24 A It will be four years in August. 25 Q Where did you live before that?		

<p>10</p> <p>1 Aquiler</p> <p>2 A I lived in Berkeley, California.</p> <p>3 Q Did you go to school there?</p> <p>4 A I was teaching in San Francisco, but I</p> <p>5 had gone to school there prior.</p> <p>6 Q At Berkeley?</p> <p>7 A Yes.</p> <p>8 Q Did Maria go there also?</p> <p>9 A She went to UCLA.</p> <p>10 Q Are you in any way connected with the</p> <p>11 Arts Theater, Theater of the Arts?</p> <p>12 A As a hobby, yes, not as a profession.</p> <p>13 Q On that particular night, you and</p> <p>14 Maria had gone to the theater, is that</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q That was at the 37th Arts Theater?</p> <p>18 A Yes.</p> <p>19 Q The name of the show was?</p> <p>20 A In The Heights.</p> <p>21 Q Had you ever seen that before?</p> <p>22 A No.</p> <p>23 Q That theater has two parts, does it</p> <p>24 not?</p> <p>25 A I don't recall there being two parts.</p>	<p>12</p> <p>1 Aquiler</p> <p>2 Q Have you been at that intersection</p> <p>3 since the night of this incident?</p> <p>4 A I believe in passing through either in</p> <p>5 a cab, definitely a cab. I've never walked</p> <p>6 through afterwards.</p> <p>7 Q When you were on your way to the post</p> <p>8 office, did you walk through it?</p> <p>9 A I would have walked.</p> <p>10 Q 37th Arts Theater is virtually at the</p> <p>11 corner of Tenth Avenue; is that correct?</p> <p>12 A Yes.</p> <p>13 Q It's on the south side of 37th?</p> <p>14 A Yes.</p> <p>15 Q Did you stay for the encore?</p> <p>16 A I believe we stayed for -- I remember</p> <p>17 applauding some of the performers. I think</p> <p>18 we started to pack up and leave as it was</p> <p>19 closing out.</p> <p>20 Q Were other people leaving at the same</p> <p>21 time?</p> <p>22 A Yes.</p> <p>23 Q Were other people leaving from other</p> <p>24 theaters at the same time?</p> <p>25 A I don't remember. I just remember the</p>
<p>11</p> <p>1 Aquiler</p> <p>2 I was in one of them.</p> <p>3 Q There are a number of theaters along</p> <p>4 West 37th Street?</p> <p>5 A Yes.</p> <p>6 Q Also some restaurants?</p> <p>7 A I don't remember restaurants on 37th,</p> <p>8 but maybe on Ninth Avenue.</p> <p>9 Q Had you ever been to that theater</p> <p>10 before?</p> <p>11 A No.</p> <p>12 Q Had you ever been at that intersection</p> <p>13 before, Ninth Avenue and 37th Street?</p> <p>14 A I may have been in passing.</p> <p>15 Q When you say in passing, you mean like</p> <p>16 in a bus or in a cab?</p> <p>17 A Walking to and from.</p> <p>18 Q Prior to that night, do you have any</p> <p>19 specific recollection of ever having been at</p> <p>20 that intersection?</p> <p>21 A Vaguely.</p> <p>22 Q What would have been the circumstances</p> <p>23 for your being there?</p> <p>24 A Trying to get to the post office, I</p> <p>25 believe, on 34th.</p>	<p>13</p> <p>1 Aquiler</p> <p>2 group I was walking with coming from that</p> <p>3 particular theater.</p> <p>4 Q When you say group, you, yourself, was</p> <p>5 just with Maria, is that right?</p> <p>6 A Yes.</p> <p>7 Q Who else was in that group?</p> <p>8 A Maria and I were walking, but there</p> <p>9 were people behind us coming from that</p> <p>10 particular theater walking towards Ninth</p> <p>11 Avenue on the south side of the street.</p> <p>12 Q Were there any people walking in front</p> <p>13 of you?</p> <p>14 A There may have been, but I don't</p> <p>15 recall. If there were, they were far enough</p> <p>16 ahead of us.</p> <p>17 Q Was it sleeting?</p> <p>18 A Yes, wet conditions.</p> <p>19 Q Did you or Maria have an umbrella?</p> <p>20 A No.</p> <p>21 Q Were you walking briskly in view of</p> <p>22 the weather?</p> <p>23 A Yes.</p> <p>24 Q Incidentally, have you spoken with</p> <p>25 Maria since her deposition on Tuesday?</p>

1	Aquiler	14
2	A	No.
3	Q	Have you spoken with Mr. Kaplen since
4	Maria's deposition on Tuesday?	
5	A	Yes.
6	Q	When?
7	A	Yesterday evening.
8	Q	Where?
9	A	On the phone.
10	Q	For how long?
11	A	About not even five minutes.
12	Q	What did she say and what did you say?
13	A	We confirmed the deposition and I
14	requested to see the police report.	
15	Q	Was there any discussion as to what
16	Maria had testified to?	
17	A	A little bit.
18	Q	What was that?
19	A	The crossing of the street, the noise,
20	the screeching, the screaming, the thud, the	
21	weather conditions.	
22	Q	What did he say Maria said about the
23	weather conditions?	
24	A	That it was also a wet night.
25	Q	What did he say that Maria said about
1	Aquiler	16
2	A	That's all I recall.
3	Q	Anything about the crosswalk?
4	A	Just the motions, the motions of
5	crossing, the motions of cross-walking,	
6	looking back.	
7	Q	Other than the one phone call sometime
8	two months ago and the phone call last night,	
9	have you ever spoken with Mr. Kaplen?	
10	A	Before this deposition, this morning,
11	we met.	
12	Q	Where this morning?
13	A	In the room down the hall.
14	Q	For how long was that meeting?
15	A	Fifteen minutes.
16	Q	Did Mr. Kaplen show you the police
17	report?	
18	A	Yes.
19	Q	Did he show you anything else?
20	A	The photographs.
21	Q	What, if anything, did he say about
22	the photographs?	
23	A	He mentioned what Michael Phillips had
24	told him about where his vehicle was.	
25	Q	What did he say?
1	Aquiler	15
2	the snow?	
3	A	I don't believe he talked about the
4	snow.	
5	Q	How about sleet?
6	A	Not specifically.
7	Q	Just wet?
8	A	Just wet.
9	Q	What did Maria say about the wet
10	night?	
11	A	Not much, just it was a wet night.
12	Q	What else did he say about what Maria
13	testified to?	
14	A	That's about it.
15	Q	Did he tell you what Maria testified
16	to about the Phillips vehicle?	
17	A	No.
18	Q	No mention at all about that?
19	A	No.
20	Q	In terms of the speed, what did she
21	say about the speed?	
22	A	It was going fast.
23	Q	Did he quantify what he meant by fast?
24	A	About 40 miles per hour.
25	Q	What else was said?
1	Aquiler	17
2	A	There was an "X" on the photograph.
3	Q	Did he show you any photographs that
4	were marked at Maria's deposition?	
5	A	Not that I know of.
6	Q	Which police report did he show you?
7	A	Clarify that police report. I'm only
8	aware of one police report.	
9	Q	Was it the police report that had the
10	writing of what you had said?	
11	A	It was handwritten.
12	Q	And what you said and what Maria said
13	a handwritten report.	
14	A	Yes..
15	Q	Was that the only report that you saw?
16	A	Yes.
17	Q	Was there anything about what you saw
18	there, whether you, whether Maria said or you	
19	said that you corrected?	
20	A	No.
21	Q	Did that accurately reflect what you
22	had said to the police?	
23	A	Yes.
24	Q	Was that statement given at the scene
25	or was that by phone sometime later?	

18	20
<p>1 Aquiler</p> <p>2 A At the scene. We were actually</p> <p>3 leaving on our way onto the train and halfway</p> <p>4 there, we got a phone call on my cell phone</p> <p>5 to return and give the report at the scene.</p> <p>6 This was about an hour and a half after</p> <p>7 because Maria decided to stick around just in</p> <p>8 case.</p> <p>9 Q Do you have any nursing background?</p> <p>10 A No.</p> <p>11 Q Does Maria?</p> <p>12 A No.</p> <p>13 Q As you were walking, I believe you</p> <p>14 said you were walking briskly down 37th</p> <p>15 Street toward Ninth?</p> <p>16 A Yes.</p> <p>17 Q And I believe you said there were</p> <p>18 people behind you, but you don't recall</p> <p>19 anybody in front of you?</p> <p>20 A Yes.</p> <p>21 Q How far behind you were the people</p> <p>22 walking?</p> <p>23 A Five to eight feet. Before the</p> <p>24 intersection, at the intersection, we</p> <p>25 congregate.</p>	<p>1 Aquiler</p> <p>2 A Yes.</p> <p>3 Q Was that, in fact, mainly young people</p> <p>4 at the theater?</p> <p>5 A It was a good mix, but I believe</p> <p>6 mostly young people.</p> <p>7 Q While you were at the theater, did</p> <p>8 you ever see the young lady involved in the</p> <p>9 accident?</p> <p>10 A Not that I can recall.</p> <p>11 Q Did you ever see her before you were</p> <p>12 at the theater?</p> <p>13 A Not that I recall.</p> <p>14 Q Did you see her walking along 37th</p> <p>15 Street?</p> <p>16 A Behind us, yes.</p> <p>17 Q How was it you noticed her?</p> <p>18 A She was walking with her friend who is</p> <p>19 significantly taller than she was and it</p> <p>20 looked like they were on a date. And they</p> <p>21 were only a few feet behind me and at the</p> <p>22 intersection. They were huddled around.</p> <p>23 Q Were they also walking briskly?</p> <p>24 A It seemed like they may have been.</p> <p>25 Maria and I had a head start.</p>
19	21
<p>1 Aquiler</p> <p>2 Q As you were walking with Maria, were</p> <p>3 there other people walking in your immediate</p> <p>4 area?</p> <p>5 A Not my immediate area, just trickling</p> <p>6 out.</p> <p>7 Q Were they walking behind? Could you</p> <p>8 tell how many people there were?</p> <p>9 A Two to five. It was hard to say who</p> <p>10 was with whom because the theater had just</p> <p>11 ended.</p> <p>12 Q In view of the weather, everyone would</p> <p>13 have been walking briskly?</p> <p>14 A I believe so.</p> <p>15 Q Did anybody behind you have an</p> <p>16 umbrella?</p> <p>17 A I don't recall.</p> <p>18 Q These two to five people behind you,</p> <p>19 were they male and female?</p> <p>20 A Yes, mixed.</p> <p>21 Q Were they young people, yourself and</p> <p>22 Maria's age?</p> <p>23 A Yes.</p> <p>24 Q Was In The Heights the type of play</p> <p>25 that would attract young people?</p>	<p>1 Aquiler</p> <p>2 Q Were there other people with them?</p> <p>3 You said there were two to five people, were</p> <p>4 there other people in that group?</p> <p>5 A At that point, people disbursed and</p> <p>6 two, and Maria and I, and two Sabina and her</p> <p>7 friend, and upon crossing the street, that's</p> <p>8 all I remember.</p> <p>9 Q How was it in the course of walking</p> <p>10 along 37th Street, you took notice of</p> <p>11 somebody behind you since it was sleet and</p> <p>12 you were walking briskly?</p> <p>13 A I remember noticing this.</p> <p>14 Q Did you look behind at them?</p> <p>15 A I believe so, just walking and looking</p> <p>16 back.</p> <p>17 Q Was there any particular reason why</p> <p>18 with the sleet --</p> <p>19 A Commotion and leaving the theater and</p> <p>20 the light.</p> <p>21 Q Along 37th Street now before you got</p> <p>22 to the intersection?</p> <p>23 A Yes, between the theater and the</p> <p>24 intersection.</p> <p>25 Q You did have occasion to look back?</p>

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<p>1 Aquiler 2 A I might have glanced. 3 Q What was the young lady wearing? 4 A I remember her boots. 5 Q What do you remember about her boots? 6 A They looked like Uggs, very thick. I 7 believe they were brown. I believe she was 8 wearing a long dark coat. 9 Q What was her escort wearing? 10 A Also wearing a long coat. 11 Q Dark? 12 A Dark. 13 Q Was either of them carrying anything? 14 A I don't remember. 15 Q Was either of them utilizing an 16 umbrella? 17 A I can't remember if they were 18 utilizing one or just holding one. I want to 19 say that there was one. 20 Q Did you notice anyone else in this 21 group that was leaving the theater besides 22 those two? 23 A Just random people going out. 24 Q You had never seen and did not know 25 either Ms. Parady or her escort before that;</p>		<p>1 Aquiler 2 Q I'm speaking about walking along 37th? 3 A Yes, sir. 4 Q Was that all slush and sleet? 5 A Yes, some places, there were pockets 6 of wet cement. 7 Q Was the sidewalk condition such that 8 you would look at it and walk carefully on 9 the snow and sleet? 10 A Yes, definitely. 11 Q You would tend to look down at the 12 sidewalk? 13 A Yes. 14 Q When you glanced back and saw this 15 couple, which side in terms of the curb and 16 the building was the gentleman? 17 A Closer to the building? 18 Q In terms of the width of the sidewalk 19 going from the curb of 37th Street to the 20 building line, where were they? 21 A In the middle. 22 Q Where were you? 23 A In the middle. 24 Q With regard to Maria and you, who was 25 on the outside, the curb side?</p>	
<p>1 Aquiler 2 is that correct? 3 A Correct. 4 Q So they would have been random people? 5 A Right. 6 Q How about the other random people, 7 what did you notice about them? 8 A They were just exiting the theater and 9 trying to get to the intersection, coats, 10 umbrellas, Ms. Parady and her friend happen 11 to be the closest to us and I noticed they 12 must be on a date. 13 Q What made you think they must have 14 been on a date? 15 A They were talking to each other and 16 walking together. 17 Q Where they in contact with each other 18 in terms of holding hands or anything of that 19 sort? 20 A No. 21 Q Were they walking abreast? 22 A Yes, yes, they were chatting. 23 Q Was the sidewalk slushy and sleety? 24 A Yes. Yes, or the curb where it's 25 pushed up.</p>	23	<p>1 Aquiler 2 A Maria was on the outside. 3 Q Is that the way it continued as you 4 crossed over Ninth Avenue? 5 A Yes. 6 Q Did there come a time when this group 7 behind you caught up with you? 8 A No. 9 Q As you walked along, eventually you 10 came to the southwest corner of Ninth and 11 37th? 12 A From the sidewalk from the theater. 13 Q The corner? 14 A Yes. 15 Q Do you drive a car? 16 A When I'm in San Diego. San Diego is 17 where I lived in California. 18 Q I assume you're licensed? 19 A Yes. 20 Q Do you have a car in New York? 21 A No. 22 Q Other than the visits to San Diego, do 23 you drive a car at all? 24 A No. 25 Q Have you ever driven a car in New</p>	25

<p>1 Aquiler</p> <p>2 York?</p> <p>3 A One time as a designated driver</p> <p>4 situation. That was enough.</p> <p>5 Q Would it be fair to say you've never</p> <p>6 driven at 37th and Ninth?</p> <p>7 A Yes.</p> <p>8 Q Would it be fair to say you've never</p> <p>9 driven, (comma)through the Lincoln Tunnel?</p> <p>10 A I have driven through the Lincoln</p> <p>11 Tunnel.</p> <p>12 Q Did you enter the Lincoln Tunnel just</p> <p>13 before 37th Street and Ninth Avenue?</p> <p>14 A I have no recollection where I</p> <p>15 entered. I just had to get my drunken friend</p> <p>16 home.</p> <p>17 Q And he unfortunately lived in New</p> <p>18 Jersey?</p> <p>19 A Yes.</p> <p>20 Q That was the one time that you drove</p> <p>21 in New York?</p> <p>22 A Yes.</p> <p>23 Q When was that?</p> <p>24 A Between 2003 and 2004.</p> <p>25 Q Was it in the snow or sleet?</p>	<p>26</p> <p>1 Aquiler</p> <p>2 Q At that time, what were the weather</p> <p>3 conditions?</p> <p>4 A Wet.</p> <p>5 Q Sleet?</p> <p>6 A Yes, slushy, wet.</p> <p>7 Q Falling sleet?</p> <p>8 A I remember the water in my face, yes.</p> <p>9 Q Did you have any kind of protection</p> <p>10 over your face?</p> <p>11 A I had my hat.</p> <p>12 Q Maria, the same?</p> <p>13 A I believe so.</p> <p>14 Q Did you have any kind of waterproof</p> <p>15 boots?</p> <p>16 A I definitely had boots on.</p> <p>17 Q Rubber soles?</p> <p>18 A Rubber soles, that night they were</p> <p>19 waterproof.</p> <p>20 Q Did Maria have the same?</p> <p>21 A She had boots as well. I'm not sure</p> <p>22 about the sole. I remember them being black</p> <p>23 and I'm pretty sure they were waterproof.</p> <p>24 Q Were you carrying anything?</p> <p>25 A I believe I had a purse.</p>
<p>27</p> <p>1 Aquiler</p> <p>2 A No.</p> <p>3 Q When you arrived at the corner of</p> <p>4 Ninth Avenue and 37th Street, were you the</p> <p>5 first ones to arrive there, you and Maria?</p> <p>6 A We had the lead.</p> <p>7 Q When you arrived there, what was the</p> <p>8 signal from the pedestrian side crossing</p> <p>9 Ninth Avenue?</p> <p>10 A It was the hand, the red hand at that</p> <p>11 point, so we waited?</p> <p>12 Q How long did you wait?</p> <p>13 A 30 seconds to a minute, I would say.</p> <p>14 Q During that time, what was the</p> <p>15 condition of traffic going south on Ninth</p> <p>16 Avenue.</p> <p>17 A At the time we saw the red hand?</p> <p>18 Q Yes.</p> <p>19 A There were cars going southbound on</p> <p>20 Ninth Avenue.</p> <p>21 Q Would you describe it as heavy, light,</p> <p>22 medium?</p> <p>23 A Medium to heavy because of such</p> <p>24 weather conditions, it seemed at that time of</p> <p>25 night.</p>	<p>29</p> <p>1 Aquiler</p> <p>2 Q How about Maria?</p> <p>3 A I believe she had a purse as well.</p> <p>4 Q Was either one of you utilizing an</p> <p>5 Ipod?</p> <p>6 A I don't own one. She owns one, but</p> <p>7 she was not using it at the time. We were</p> <p>8 chatting though.</p> <p>9 Q Was either one of you utilizing her</p> <p>10 cell phone?</p> <p>11 A No.</p> <p>12 Q As you waited that 30 seconds to one</p> <p>13 minute, did other people come to the corner?</p> <p>14 A Yes, there was quite a group. I would</p> <p>15 say about five people, five to seven maybe.</p> <p>16 And we were leading that group.</p> <p>17 Q Was anybody crossing 37th Street at</p> <p>18 that point going either south or north in the</p> <p>19 intersection to your left along 37th Street,</p> <p>20 crossing 37th Street along Ninth Avenue,</p> <p>21 north or south?</p> <p>22 A I can't remember. I was very focused</p> <p>23 when it's going to turn green.</p> <p>24 Q Was anyone crossing on the other side</p> <p>25 of Ninth Avenue from north to south across</p>

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<p>1 Aquiler 2 37th Street? 3 A I don't remember passing anyone. 4 Q On the other side? 5 A I don't remember. 6 Q Was anyone walking across Ninth Avenue 7 on the north side of the intersection as you 8 were waiting there? 9 A I couldn't tell you. 10 Q Was anyone waiting to cross, to come 11 westward on the same side of the intersection 12 where you were, waiting to come towards you? 13 A I can't recall. 14 Q As you crossed, did anyone cross the 15 other way? 16 A I can't recall either. 17 Q With five or seven people there, did 18 the signal turn to walk? 19 A Yes. 20 Q Did you walk? 21 A Yes. 22 Q Briskly? 23 A Yes. 24 Q At the intersection, there is a 25 traffic pole at that corner. Do you recall</p>	<p>1 Aquiler 2 eight feet behind us, not too far. 3 Q Where were the other people -- 4 A Straggling behind, five to eight feet. 5 Q Were you and Maria talking during that 6 time? 7 A We were chatting. 8 Q Were any cars proceeding west on 37th 9 Street as you were crossing? 10 A South west there was a car -- there 11 were cars going west and there were cars 12 turning to go south. 13 Q The cars going west, how many cars 14 were there going west as you were crossing? 15 A One or two. 16 Q At what speed would they have been 17 going? 18 A 30 to 40. 19 Q As you were standing on the corner 30 20 seconds to a minute, were there cars stopped 21 for the red light on 37th Street facing west? 22 A Yes. 23 Q How many cars were there? 24 A I saw maybe two sets of headlights at 25 the front and then I can't tell you how many</p>

1 Aquiler 2 Q At any time, did you ever speak with 3 Mr. Blank, her escort? 4 A No. 5 Q Did you actually see what happened in 6 terms of this accident? 7 A Visually, no. Auditorially yes. 8 Q Did you have any difficulty crossing 9 Ninth Avenue in terms of any depression in 10 the roadway? 11 A I don't recall any difficulty 12 crossing. We crossed. 13 Q Do you know where Ms. Parady was with 14 relation to any depression in the roadway 15 when she was lying there? 16 A I want to say there was a circular -- 17 I don't know what they're called -- 18 Q A manhole. 19 A I don't mean that. Like potholes. 20 Q An actual rectangular depression in 21 the sidewalk in the crosswalk? 22 A I don't recall. 23 Q You don't know where she was -- 24 A What period? 25 Q When you saw her on the ground?	38	1 Aquiler 2 saw it? 3 A Yes. 4 Q So it would have stopped from going 5 from 35 to 40 miles an hour to being stopped 6 when you saw it? 7 A Yes. 8 Q As I understand, you then proceeded to 9 the far curb or the southeast curb of Ninth 10 Avenue and 37th Street; is that correct? 11 A Yes. 12 Q And you stayed there? 13 A Yes. 14 Q You never went any closer to the scene 15 of the accident? 16 A No. 17 Q For how long did you stay there on 18 that corner? 19 A A few minutes until I believe Maria 20 took out her phone and tried to call, but it 21 seemed -- 22 Q Called 911? 23 A And it seemed like everybody around 24 utilized their cell phones including Ms. 25 Parady's escort who had his cell phone out as	40
1 Aquiler 2 A I don't recall a depression. 3 Q Was the first time that you saw her, 4 she was on the ground already? 5 A Yes. 6 Q Lying as you've described? 7 A Immediately after the sounds and the 8 noise. 9 Q You said that you heard a screech of 10 brakes; is that correct? 11 A Yes. 12 Q Did any vehicle proceed while its 13 brakes were screeching? Do you know what 14 vehicle screeched the brakes? 15 A It was the truck. 16 Q How do you know that? 17 A Because the vicinity of the truck and 18 the noise they marched. 19 Q But there were other vehicles also? 20 A Yes, when we looked back at the 21 position of the truck, it proved it was the 22 vehicle that made the sound. 23 Q For how long was this screech? 24 A Three to five seconds. 25 Q And the vehicle was stopped when you	39	1 Aquiler 2 well. 3 Q Who is the first one that came there, 4 the cops? 5 A NYPD van. 6 Q How long was that? 7 A Couple of minutes, maybe less, because 8 they had the whole intersection blocked off 9 in a matter of minutes. 10 Q Did they put up the yellow tape? 11 A Yes. 12 Q Did they put that up right away? 13 A Yes. 14 Q Did you ever speak with either Ms. 15 Parady or anybody from her family after this 16 accident? 17 A No, I had no idea what happened. 18 Q Did you ever speak to Mr. Blank? 19 A No. 20 Q As I understand, after a few minutes 21 on the corner, you then left? 22 A Yes. 23 Q Going towards the train? 24 A Towards the train eastbound and then 25 we got the phone call.	41

1 Aquiler 2 Q That was from the police? 3 A Yes. 4 Q You then returned to the scene? 5 A Returned to the scene and waited a 6 long time before we were questioned. 7 Q You said you waited a few minutes at 8 the corner, then you started walking? 9 A Right. 10 Q How long after you left the 11 intersection that you got the call? 12 A A minute or two. 13 Q Do you recall what police officer it 14 was? 15 A I don't remember his name. 16 Q You said you waited a long time. Had 17 Ms. Parady been taken to the hospital at that 18 point? 19 A Yes. 20 Q Did you make any observations at that 21 time about anything with regard to this 22 accident? 23 A The yellow tape was still up. The man 24 driving the vehicle was now out of his 25 vehicle at the same intersection where we	42 1 Aquiler 2 vehicle. 3 Q Was that scream from in front of you 4 or behind? 5 A Behind me. 6 Q Was that a male or female voice? 7 A Female. 8 Q Could you describe that scream for us? 9 A It was a loud scream. Almost blended 10 in with the screeching of the tires. 11 Q Do you know what came first, the 12 scream or the screeching of the tires as 13 you've described? 14 A I want to say after. 15 Q After you heard this screeching of the 16 tires, what was the next thing you heard? 17 A A loud thud. 18 Q Did that screech that you heard -- 19 where was the vicinity of that scream? 20 A Right behind me. 21 Q Where did it come from? 22 A Maybe to the left. 23 Q Were you able to ascertain who was 24 making that sound? 25 A Ms. Parady.
43 1 Aquiler 2 were waiting to cross, the southwest corner 3 and I remember he was on his phone, very 4 distressed, almost in shock. 5 Q Was Mr. Blank still there? 6 A No, I believe he went in the ambulance 7 with Ms. Parady. 8 Q Was there a nurse there? 9 A Not that I recall. 10 Q Did you speak to anyone other than 11 police officers then? 12 A Maria. This is while we're waiting? 13 Q Yes. 14 A Yes, Maria. 15 MR. BUTLER: Nothing further. 16 Thank you. 17 EXAMINATION BY 18 MR. KAPLEN: 19 Q While you were crossing the street, 20 did you hear anybody scream? 21 A Yes. 22 Q Did you hear that scream before or 23 after you saw the vehicle operated by Michael 24 Phillips? 25 A I heard the scream after I saw the	45 1 Aquiler 2 MR. KAPLEN: No further 3 questions. 4 CONTINUED EXAMINATION 5 BY MR. BUTLER: 6 Q Had you ever heard Ms. Parady scream 7 before? 8 A No. 9 Q Had you ever heard any of the women 10 behind you scream before? 11 A No. 12 Q Did you see anyone, see anyone, as 13 they were screaming? 14 A No. 15 (Time noted: 12:30 p.m.) 16 17 18 ----- 19 SHARLENE AQUILER 20 Subscribed and Sworn to before me 21 this day of 2008. 22 23 ----- 24 Notary Public 25

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1
2 CERTIFICATE
3 I, JUSTYNE HAISONAK, hereby certify that
4 the Deposition of SHARLENE AQUILER was held before
5 me on the 20th day of December, 2007; that said
6 witness was duly sworn before the commencement of
7 his testimony; that the testimony was taken
8 stenographically by myself and then transcribed by
9 myself; that the party was represented by counsel
10 as appears herein;
11 That the within transcript is a true
12 record of the Deposition of said witness;
13 That I am not connected by blood or
14 marriage with any of the parties; that I am not
15 interested directly or indirectly in the outcome
16 of this matter; that I am not in the employ of any
17 of the counsel.
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this day of , 2008.

20
21 -----

22 JUSTYNE HAISONAK
23
24
25

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2	PAGE/LINE	CORRECTION
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